IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5702 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZUBAIR KASAM BAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5702 of 2001

MR CL SONI for Petitioner No. 1

Mr. M.A. Patel, APP, for Respondent No. 1

MR PJ KANABAR for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. The petitioner, by way of filing this application

under Section 482 of the Code of Criminal Procedure ('Code' for short), has prayed to quash complaint filed filed by respondent No.2 against the petitioner, which is registered as Enquiry Case No.19 of 2001 in the Court of learned Judicial Magistrate, First Class, Dhoraji for the offences punishable under Section 420 of the Indian Penal Code.

2. Having heard the learned counsel for the parties and the learned Additional Public Prosecutor, Mr. M.A. Patel, in my view, the complaint, prima facie, does not establish the ingredients of Section 420 of the Indian Penal Code. It is settled legal principle that, unless the ingredients involved in the offence alleged in the complaint, are made out, continuation of proceeding on the basis of such complaint will be a sheer abuse of process of law. The learned advocate for the original complainant (respondent No.2) has not been able to point out that the complaint, prima facie, establishes the ingredients of Section 420 of the Indian Penal Code. In my view, allowing such criminal proceeding of the present nature to continue would result in manifest injustice and the present proceeding initiated is clearly an abuse of the process of the Court.

3. As a result of foregoing discussion, this application is allowed. The complaint filed by respondent No.2 against the petitioner, which is registered as Enquiry Case No.19 of 2001 in the Court of learned Judicial Magistrate, First Class, Dhoraji for the offences punishable under Section 420 of the Indian Penal Code, and the order dated May 10, 2001 passed therein, are quashed. Rule is made absolute.

October 11, 2001 (M.H. Kadri, J.)
(swamy)